

Office-Supreme Court, W.
FILED

OCT 25 1951

CHARLES ELMORE, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LORETTA STARVUS STACK, AL
RICHMOND, PHILIP MARSHALL
CONNELLY, DOROTHY ROSENBLUM
HEALEY, ERNEST OTTO FOX,
WILLIAM SCHNEIDERMAN, CARL
RUDE LAMBERT, HENRY STEINBERG,
OLETA O'CONNOR YATES, ROSE
CHERNIN KUSNITZ, MARY BERNADETTE
DOYLE and ALBERT JASON LIMA,

No. 400

Petitioners-Appellants,

-VS-

JAMES J. BOYLE, United States
Marshal,

Respondent.

TRANSCRIPT OF RECORD ON APPEAL

(OLETA O'CONNOR YATES)

NAMES AND ADDRESSES OF COUNSEL

MARGOLIS and McTERNAN
112 West 9th Street
Los Angeles 15, California
and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California

Attorneys for Petitioners-Appellants

DANIEL G. MARSHAL
458 South Spring Street
Los Angeles 13, California

Attorney for Petitioner-Appellant
Philip Marshall Connelly

RICHARD GLADSTEIN,
240 Montgomery Street
San Francisco 4, California

Attorney for Petitioners-Appellants
Al Richmond, Ernest Otto Fox and
Mary Bernadette Doyle

CHARLES R. GARRY
68 Post Street
San Francisco 4, California

Attorney for Petitioner-Appellant
Carl Rude Lambert

JULIUS M. KELLER
68 Post Street
San Francisco 4, California

Attorney for Petitioner-Appellant
Loretta Starvus Stack

BENJAMIN DREYFUS
68 Post Street
San Francisco 4, California

Attorney for Petitioner-Appellant
Oleta O'Connor Yates

ERNEST A. TOLIN
United States Attorney.

RAY H. KINNISON
Assistant United States
Attorney
Chief of Criminal Division

600 Federal Building
Los Angeles 12, California

Attorneys for Respondent

TABLE OF CONTENTS

Petition For Writ Of Habeas Corpus.

Order To Show Cause Why Writ Of Habeas Corpus Should Not Issue

Return To Writ And Indictment Annexed Thereto

Stipulation And Order of Consolidation

Memorandum Opinion Of District Court

Order Denying Petitions For Writs Of Habeas Corpus

Notice Of Appeal

Designation Of Record

1 MARGOLIS and McTERNAN
112 West Ninth Street
2 Los Angeles 15, California
Vandike 7153

3 and
4 LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
5 Hightower 4-1707

6 Attorneys for Petitioner

8 IN THE UNITED STATES DISTRICT COURT

9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 CENTRAL DIVISION

11 ~~OLETA O'CONNOR YATES,~~

12 Petitioner,

13 v.

14 JAMES J. BOYLE, United
States Marshal,

15 Respondent.
16

No. 13444-C

PETITION FOR WRIT OF

HABEAS CORPUS

17
18 TO THE JUDGES OF THE UNITED STATES DISTRICT FOR THE SOUTHERN

19 DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

20 ~~Oleta O'Connor Yates~~, the petitioner above named
21 hereby petitions this honorable Court for a writ of habeas corpus
22 directing the respondent James J. Boyle, United States Marshal
23 for the Southern District of California, in whose custody peti-
24 tioner is now restrained of her liberty, to produce the body of
25 your petitioner, ~~Oleta O'Connor Yates~~, before this Court at
26 a time and place specified and then and there to show cause why
27 petitioner should not be released from the custody of the re-
28 spondent upon bail in such reasonable sum as may be determined
29 by this Court; and in support thereof, your petitioner alleges
30 as follows:

31 I.

32 On July 25, 1951, a warrant was issued by Howard V.

1 Calverley, United States Commissioner in the Southern District of
2 California, pursuant to a complaint charging your petitioner and
3 one William Schneiderman, with conspiracy to commit offenses
4 against the United States prohibited by Section 2 of the Smith Act
5 54 Stat. 671.

6 II.

7 On July 26, 1951, petitioner was unlawfully arrested by
8 agents of the Federal Bureau of Investigation who produced no
9 warrant for arrest and stated that they needed no warrant of
10 arrest for your petitioner although your petitioner demanded the
11 production of a warrant of arrest; that said agents declined to
12 state the reasons for your petitioner's arrest or the existence
13 of any charges against petitioner or the fact that a warrant had
14 been issued, and thereupon forcibly took petitioner into custody.

15 III.

16 Following petitioner's arrest as aforesaid and on July 26,
17 1951, petitioner was arraigned before United States Commissioner
18 Francis St. J. Fox in San Francisco and by said Commissioner was
19 ordered to be held in custody upon bail fixed by said Commissioner
20 in the sum of \$7,500. Bail in the aforesaid sum was furnished and
21 petitioner was released from her confinement in the United States
22 Marshal's office.

23 IV.

24 Thereafter and on or about July 27, 1951; the United States
25 Attorney for the Northern District of California made application
26 to the Honorable Louis E. Goodman, a judge of the United States
27 District Court for the Northern District of California for an
28 increase in said bail. On said day the said District Judge modi-
29 fied the aforementioned order of the said Commissioner and did
30 make his order fixing bail in the sum of \$50,000. In fixing the
31 said sum the District Judge ruled that the narrow question before
32 him was the amount of bail which should be fixed pending removal

1 to this Court where the complaint originally issued. By virtue
2 of said order of said Judge, petitioner was then confined in the
3 County Jail of the City and County of San Francisco in the cus-
4 tody of the acting United States Marshal.

5
6 V.

7 Thereafter, on July 28, 1951, petitioner filed a petition
8 for writ of habeas corpus to the said Honorable Louis E. Good-
9 man, for a reduction of bail and the said Judge, basing his
10 ruling on the record of proceedings of July 27, 1951, denied
11 the petition.

12 VI.

13 Upon information and belief, the United States Attorney
14 for the Southern District of California, summoned a Grand Jury
15 to convene on July 31, 1951, at 9 A.M. and in the space of
16 about fifteen minutes the said Grand Jury returned the indict-
17 ment herein, charging your petitioner together with the above-
18 mentioned defendants with a conspiracy to violate Section 2 of
19 the Smith Act, 54 Stat. 671.

20 VII.

21 On August 1, 1951, petitioner was removed from the County
22 Jail of the City and County of San Francisco and brought to
23 the County of Los Angeles where petitioner was confined in the
24 County Jail of the County of Los Angeles under the custody of
25 the United States Marshal James J. Boyle.

26 VIII.

27 Thereafter and on August 2, 1951, petitioner was taken
28 before the Honorable James M. Carter, the judge of this Court
29 before whom the indictment was returned. Upon information and
30 belief, the true bill returned against the defendants contained
31 no recommendation by the Grand Jury relative to bail. Upon
32 information and belief, the names of the defendants were written

1 on a copy of the indictment with the notation of \$75,000 for all
2 defendants except the defendant William Schneiderman, where the
3 notation was \$100,000, and that these writings were unsigned.
4 Upon arraignment before the said Judge no further reference was
5 made to bail.

6 IX.

7 Thereafter and on August 6, 1951, petitioner moved in the
8 United States District Court for the Southern District of Cali-
9 fornia, Central Division, to fix bail in a reasonable sum or if
10 bail had been fixed in the sum of \$75,000 as aforesaid, then for
11 a reduction of this excessive bail to a reasonable amount.

12 X.

13 On August 6, 1951, the aforesaid motion to fix or reduce
14 bail came on for argument before the Honorable James M. Carter,
15 United States Judge for the Southern District of California, Cen-
16 tral Division.

17 XI.

18 Before the commencement of the argument of the motion to
19 fix or reduce bail your petitioner along with the other defen-
20 dants named in the indictment herein except William Schneiderman
21 filed with the said Court an affidavit of personal bias and pre-
22 judice and requested the said Court to disqualify itself and to
23 transfer the hearing on bail to another judge of the District
24 Court pursuant to the provisions of 28 U.S.C.A. Section 144;
25 that said Judge declined to disqualify himself and held the affi-
26 davit of personal bias and prejudice legally insufficient on
27 August 7, 1951.

28 XII.

29 That thereupon, and at the request of counsel for one of
30 the defendants herein, Philip Marshall Connelly, the said Judge
31 James M. Carter withheld his ruling on the said Connelly's motion
32 to fix or reduce bail until an application could be made to the

1 United States Court of Appeals for the Ninth Circuit for a
2 ruling on the sufficiency of the aforesaid affidavit of bias
3 and prejudice.

4 XIII.

5 That thereafter, the motion to fix or reduce bail on your
6 petitioner's behalf was argued before the said Judge and on
7 August 8, 1951, your petitioner's bail was fixed at the sum of
8 \$25,000.

9 XIV.

10 Thereafter, on August 13, 1951, your petitioner filed a
11 petition for writ of habeas corpus in this Court praying that
12 the writ issue and that petitioner be released from the custody
13 of the respondent upon reasonable bail, and on the said day, the
14 writ was issued by the Honorable William C. Mathes, a Judge of
15 this Court and made returnable before said Judge on August 15,
16 1951.

17 XV.

18 On August 15, 1951, the said writ came on for hearing before
19 the said Judge William C. Mathes, and after hearing, and by
20 order dated August 17, 1951, the said petition was dismissed
21 and the writ discharged.

22 XVI.

23 On August 18, 1951, your petitioner filed a notice of ap-
24 peal to the United States Court of Appeals for the Ninth Cir-
25 cuit from the aforesaid order discharging the writ of habeas
26 corpus.

27 XVII.

28 Thereafter, and on August 24, 1951, the United States Court
29 of Appeals rendered its decision on the application of the de-
30 fendant herein, Philip Marshall Connelly, to disqualify the
31 aforesaid Judge James M. Carter, and the said Court did hold
32 that the aforesaid affidavit of bias and prejudice was legally

3
1 sufficient and ordered the said Judge to proceed no further
2 respecting the said Connelly's bail proceedings or in connec-
3 tion with the said Connelly's prosecution under the indictment.

4 XVIII.

5 In view of the decision of the Court of Appeals, and
6 because of the doubt created thereby as to whether the said
7 Judge James M. Carter had the power or jurisdiction originally
8 to fix or reduce bail for petitioner or the other petitioners
9 herein, after the aforesaid joint affidavit of bias and preju-
10 dice was filed, the petitioner decided to withdraw the afore-
11 said appeal.

12 XIX.

13 On August 27, 1951, the United States Attorney for the
14 Southern District of California, counsel for the respondent,
15 and counsel for the petitioner stipulated in writing to dis-
16 miss the aforesaid appeal and said stipulation was filed with
17 the clerk of the United States Court of Appeals for the Ninth
18 Circuit in accordance with Rule 16 of the said Court.

19 XX.

20 On August 29, 1951, petitioner together with the other de-
21 fendants has brought before the said James M. Carter who for-
22 mally disqualified himself, and thereupon the proceedings were
23 assigned by the presiding Judge of the said District Court to
24 the aforesaid Judge William C. Mathes.

25 XXI.

26 On August 29 and 30, 1951, argument on motions to fix or
27 reduce bail were made before the said Judge William C. Mathes
28 and the said Judge on August 30, 1951, fixed bail for petition-
29 er in the sum of \$50,000. At the same time, the said Judge set
30 September 18, 1951 as the time for filing motions and September
31 26 as the time for argument of said motions; and fixed Septem-
32 ber 10, 1951, as the day for the appearance of counsel to de-

1 termine the date of trial which the said Judge indicated would be
2 October 30, 1951, unless strong reason was shown to the contrary.

3 XXII.

4 Your petitioner is wholly unable to furnish bail in the sum
5 of \$50,000 and by virtue thereof all the proceedings heretofore
6 had herein which have confined your petitioner in the County Jail
7 and unlawfully deprived petitioner of liberty and abridged the
8 rights guaranteed petitioner by the Fifth and Eighth Amendments
9 to the Constitution of the United States. Exhibits A and B an-
10 nexed hereto and made a part hereof clearly reveal that petition-
11 er has been denied equal justice by the action of the Court in
12 fixing bail at the grossly excessive sum of \$50,000.

13 XXIII.

14 Petitioner is advised by Counsel that under the Constitution
15 petitioner is entitled to bail as a matter of right and that the
16 requirement of excessive bail is a denial of bail. Your petition-
17 er is entitled to freely prepare a defense, to consult with coun-
18 sel and witnesses, and all of this is denied by the unlawful con-
19 finement herein.

20 XXIV.

21
22 Petitioner was born in the City and County of San Francisco
23 forty-one years ago. Her great-grandparents settled in the said
24 City and County in 1850, and petitioner and her parents and grand-
25 parents have never resided elsewhere. Petitioner is thus a citi-
26 zen of the United States.

27 XXV.

28
29 Petitioner attended Notre Dame Grammar School, Girls' High
30 School (both in San Francisco), and the University of California
31 at Berkeley, California, where she won Bachelor of Arts and
32 Master of Arts degrees.

1 XXVI.

2 Petitioner and her husband have resided for five years last
3 past at their home at 419 Peru Avenue in the City and County of
4 San Francisco, which home they own, subject to a purchase money
5 mortgage or deed of trust. The original purchase price of the
6 said home was \$4,000, and petitioner and her husband have no other
7 assets other than a 1942 Dodge automobile and approximately \$500.
8 in a commercial bank account.

9 XXVII.

10 Petitioner has always led an active and public life in the
11 City and County of San Francisco. She has served by appointment
12 of former Mayor Roger Lapham on the Mayor's Committee on Civic
13 Unity. During two additional years petitioner has served on the
14 Executive Committee of the Council for Civic Unity, an eleomony-
15 nary organization in the City and County of San Francisco devoted
16 to the improvement of race relations by the elimination of dis-
17 crimination based on race, color or creed. On two occasions she
18 was a candidate on the ballot for a position on the Board of Super-
19 visors of the City and County of San Francisco, and on each occa-
20 sion polled in excess of 40,000 votes. Petitioner has never be-
21 fore been arrested, not even for a traffic violation.

22 XXVIII.

23 For more than one year last past, petitioner has been af-
24 flicted with a heart condition diagnosed by her physician as ex-
25 cessive palpitation. Petitioner has been informed by her physi-
26 cians that her condition requires regular examination by them,
27 that she must be regularly medicated by the use of pheno-barbitol
28 and that her condition is supposed to become aggravated upon undue
29 excitement. They have prescribed the observance of regular hours,
30 rest, the avoidance of any disturbances and the continual use of
31 prescribed medication. Petitioner has on a previous occasion
32 suffered a spontaneous pneumothorax which caused the left side of

1 her lung to collapse. She has been advised by her physician that
2 this kind of an attack can happen to her again and any cold at
3 the present time causes her pain on the left side. Petitioner has
4 arthritis in the fingers of one hand and in her knee. Petitioner
5 is badly in need of treatment for all her teeth which are now in
6 a very poor condition. Her physician has also ordered regular
7 basal metabolism tests and chest x-rays at least twice a year.

8
9 XXIX:

10 Petitioner hereby states and represents to this Court that
11 she intends in good faith to remain and that she will remain with-
12 in the jurisdiction of this Court at all times throughout the
13 prosecution of the proceedings under the indictment and that she
14 does not intend to and will not at any time during such proceed-
15 ings leave the jurisdiction of this Court without the approval of
16 the Court.

17 Petitioner believes that she is not guilty of the offense
18 charged in the indictment and she intends to vigorously prosecute
19 her defense. Petitioner believes that upon the trial of this in-
20 dictment herein, she will be entitled to a verdict of not guilty
21 and that a conviction upon the allegations thereof would deprive
22 her of liberties secured to her by the Constitution of the United
23 States.

XXX

XXX

1
2 In order to properly prepare petitioner's defense with the
3 aid of counsel, it is vital that petitioner be released on reason-
4 able bail. An order was entered by the aforesaid Judge William C.
5 Mathes on August 31, 1951 directing the conditions under which
6 petitioner and the co-defendants could prepare for trial. A copy
7 of the aforesaid Order is annexed hereto and marked Exhibit "C."
8 The provisions made in the said Order for the conditions under
9 which the petitioner and the co-defendants may prepare for trial
10 remain inadequate, and under the circumstances hereinafter set
11 forth will place onerous burdens upon the petitioner in the prep-
12 aration of the defense to the charges contained in the indictment.
13 The petitioner avers that unless petitioner is released on reason-
14 able bail, petitioner will be deprived of a fair trial without due
15 process of law.

16 XXX /

17 Under the aforesaid Order the petitioner is permitted to work
18 with counsel on the preparation of the case on Mondays through
19 Fridays only between the hours of 9 A.M. and 5 P.M. These limita-
20 tions upon the hours of work disregard the scope and nature of the
21 preparation which must be made in the case herein and which, if a
22 proper defense is to be made, requires fulltime preparation, es-
23 pecially in the evenings and on weekends. In addition, the peti-
24 tioner must prepare, under the said Order, with co-defendants and
25 counsel in a room in the Federal Building or at such place as the
26 respondent shall select; while working in said designated room,
27 petitioner is required to bring in meals at petitioner's own ex-
28 pense; bring in books, documents and other materials without cen-
29 sorship as to content only; and allowed to consult with witnesses
30 provided that each witness shall furnish to respondent his name,
31 address, crime record, if any, and general occupation.

XXX//

For the purpose of adequately preparing for their defense herein it will be necessary for the defendants including petitioner to examine and study each of the exhibits offered by the Government in the case of United States v. Dennis and each of the exhibits offered by the defendants in said case, for the reason that the indictment herein charges that each of the defendants herein are parties to the same alleged conspiracy which was the basis of the charge against the defendants in the said case of United States v. Dennis.

XXX//

In the said case of United States v. Dennis the Government offered at the trial 234 exhibits of which number approximately 200 were admitted in evidence. The said exhibits included portions of books such as the "English Version, Seventh World Congress, Communist International, Volume 15" with more than 850 pages, excerpts from numerous editions of the Daily Worker and excerpts from numerous other pamphlets and documents published over a period of many years. For example, the first twenty Government exhibits out of the total of 234 offered were:

1. Photostatic copy of an article from "Daily Worker" of October 2, 1935.

2. Pages 861 and 862 of book entitled "English Version. Seventh World Congress. Communist International 8/8/35"-- Vol. 15.

3. Excerpts from booklet entitled "Program of the Communist International." (These excerpts ran from page 14473 to page 14520 in the Joint Appendix of the said case of United States v. Dennis.)

4. Excerpts from Manual entitled "Manual of Organization" by J. Peters. (These excerpts ran from page 14521 to 14536 in the said Joint Appendix.)

5. Excerpts from Manual entitled "Why Communism?" by M. J. Olgin. (These excerpts ran from page 14537 to 14555 in the said Joint Appendix.)

6. Book entitled "Foundations of Leninism," by Joseph Stalin. (The entire book consisting of 123 printed pages was admitted in evidence.)

7. Article "Strengthen National Unity," by Earl Browder, from "The Worker," dated 1/16/44, Mag. Sec., pages 7-12.

8. Booklet entitled "The Communist," dated Feb., 1944.
8-A. Pages 107 and 108 of booklet entitled "The Communist" of Feb., 1944.

9. Pamphlet entitled "The Path to Peace, Progress and Prosperity" - May 20-22, 1944.

10. Page 10 of New York Times - 5/7/45.

11. Page 1 of New York World Telegram - 5/22/45.

12. Photostat of "Daily Worker" of 5/24/45.

12-A. Article, "On the Dissolution of the Communist Party of the United States of America," by Jacques Duclos, from pages 7, 8 and 9 of "Daily Worker" of 5/24/45. (This article ran from page 14557 to 14580 in the said Joint Appendix.)

13. Photostat of "Daily Worker" of June 4, 1945.

13-A. ~~Article "The Present Situation and Next Tasks"~~
Resolution of National Board Communist Political Association adopted June 2, 1945, from pages 4 and 5 of "Daily Worker" of June 4, 1945. (This article ran from page 14581 to page 14594 in the said Joint Appendix.)

14. Photostat of "Daily Worker" of June 10, 1945.

14-A. Article "On Revisionism in the C.P.A." from pages 7 and 8 of "Daily Worker" of June 10, 1945. (This article ran from page 14594 to 14601 in the said Joint Appendix.)

15. Photostat of "Daily Worker" of June 16, 1945.

15-A. Article "Thompson Discusses Browder's Program" by Bob Thompson, page 7 of "Daily Worker" of June 16, 1945.

16. A letter.

17. Booklet entitled "Political Affairs," dated July, 1945, and excerpts from said booklet as indicated. (These excerpts ran from page 14608 to page 14652 in the said Joint Appendix.)

18. Photostat of "Daily Worker" of June 22, 1945.

18-A. Article "CPA National Committee backs Resolution, Calls Convention," page 2 of "Daily Worker" of June 22, 1945.

19. Photostat of "Daily Worker" of 6/23/45.

19-A. Article "Call CPA Convention July 26" from page 3 of "Daily Worker" of 6/23/45.

20. Photostat of "The Worker" of 6/24/45.

20-A. Article "Says Leadership Can't Shirk Responsibilities for Errors," by John Williamson, from page 8 of "The Worker" of 6/24/45.

The defense in that case offered 346 exhibits of which 93 were admitted in evidence. The said exhibits were similar in source and length to those offered by the prosecution.

X X X V

In order to adequately prepare for the defense it will be necessary for the defendants including petitioner to examine each of the aforesaid exhibits in their entirety in order to ascertain whether portions of the exhibits not offered or received in evidence may be used to rebut the inferences which the Government will ask the jury to draw from the portions of the exhibits which it offers. In addition, it will be necessary for the defendants to examine numerous other books, pamphlets and newspapers in order to determine what related material is available to them for the purposes mentioned above.

X X X V

Many of the books, documents and pamphlets are, so far as defendants know, not readily available at any one place and it will be necessary for defendants to examine the bibliographies of various libraries such as the Los Angeles Public Library, the University of California Library at Los Angeles, the Huntington Library, and others, and to visit various book stores to determine what books and pamphlets they have available, to examine their own files, records and libraries, as well as to seek to find other persons who may have some of said books, pamphlets or documents available.

X X X V I

The defendants including petitioner have been advised by their counsel that it will be impossible for their counsel to undertake the responsibility for this work and that if preparation is to be made with respect to the various documents which may be offered on behalf of the Government and which should be offered on behalf of the defense, it will be necessary for the defendants themselves to secure such documents to become thoroughly familiar with them, to analyze them and to present their analysis to their said counsel.

X X X V II

In addition to the books, records and documents offered by both sides in the case of United States v. Dennis, it will be necessary for the defendants including petitioner to examine numerous publications, pamphlets and similar documents which were issued on the West Coast which it will be necessary for the defendants to secure from the various sources enumerated above in order to prepare to meet evidence which the Government may offer with respect to the ideas and beliefs and the speech and writings of these defendants, and in order to present their own defense with respect to such ideas, beliefs, speech and writings.

14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

It will be absolutely impossible for the defendants to prepare their defense unless they are in a position to visit their various homes and offices, the libraries mentioned above, book stores, the homes of persons who may have material available, and other places where they may discover that some of the material needed is available.

X X X I X

In addition, they will require the opportunity frequently to consult privately and confidentially with their counsel, both individually and in groups. They will also require assistance from research persons, secretaries and other persons with whom they must consult frequently and regularly in order to undertake even the beginnings of the vast job of preparation which confronts them.

X L

The tremendous task of preparation would present many problems even if the defendants were free on bail. The indictment in this case being based on the alleged ideas and beliefs allegedly held by the defendants as well as the ideas and beliefs allegedly contained in books, documents, newspapers and other writings presents a unique problem from the standpoint of preparation for trial. There is involved in this case the fundamental principles of Marxism-Leninism, a world view of nature and society first developed by Marx and Engels over 100 years ago and having its origin in much of the prior thought of mankind especially British classical political economy, French materialism and German classical idealism, especially that of Hegel. Marxism was added to and extended and further developed over the period of a century on the basis of new conditions and new experiences throughout the world. Leninism is a further development of Marxism in the period referred to by Lenin as the epoch of imperialism.

7
XLI

As a comprehensive world view, Marxism-Leninism embraces all aspects of nature and society. It consequently deals with innumerable teachings, doctrines, laws, concepts, theories and tendencies in such spheres as history, philosophy, political economy, sociology, etc.

XLII

The principles of Marxism and Leninism, their development and their application in concrete situations, are not contained in any single text or compendia but are contained in the writings of many Marxist scholars and philosophers published over many years and in many countries. The defendants in this case must prepare to defend themselves against the charge that they have conspired to advocate matters which may appear in any one of the thousands upon thousands of publications upon which the Government might rely. In addition, they must be prepared to present their own views in respect to these innumerable documents. Never before the Dennis case has any court of law sought to try such a body of doctrine and thinking. In this type of trial, a trial of books and ideas, only the most intensive and concentrated work will permit even the minimum amount of preparation necessary for the defendants to present a defense.

XLIII

The indictment herein charges that as a part of the alleged conspiracy petitioner and the other persons named in the indictment, and divers unnamed persons, would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including but not limited to "Political Affairs," "Daily People's World," "Daily Worker" and "The Worker."

XLIV

With respect to the said Daily People's World, as alleged in

16

1 the petition of Philip Marshall Connelly, this newspaper was pub-
2 lished last year Monday through Friday of each week and prior to
3 that time and for a number of years prior to April 1, 1945, said
4 newspaper was published Monday through Saturday of each week. In
5 order, therefore, just to examine and analyze the issues of the
6 said paper commencing April 1, 1945 (the date when the alleged con-
7 spiracy herein was begun) it would be necessary to examine 1,770
8 issues of not less than four pages and as many as eight to ten
9 pages of conventional size or tabloid size newspaper. The other
10 publications named in the indictment herein are, on information
11 and belief, of considerable volume probably exceeding in size that
12 of the Daily People's World as aforesaid. o

13 XLV

14 In order to properly prepare the defense herein as above out-
15 lined, there is need for petitioner's freedom on reasonable bail
16 so that petitioner can earn his livelihood and obtain the necessary
17 funds required in a legal defense of the scope hereinabove stated.
18 Petitioner cannot properly prepare a defense while petitioner and
19 petitioner's witnesses are subject to surveillance and confinement
20 in a room, where petitioner is unable to earn a livelihood and
21 where the time for consultation among counsel, witnesses and peti-
22 tioner is severely limited.

23 XLVI

24 In view of the facts and circumstances hereinabove set forth,
25 petitioner respectfully submits to the Court that petitioner is at
26 the present time unlawfully imprisoned and restrained of petition-
27 er's liberty; that petitioner's imprisonment and detention are il-
28 legal, arbitrary and a denial of rights secured to petitioner by
29 the Constitution of the United States and that bail in the sum of
30 \$50,000 is so excessive and so unreasonable as to constitute an
31 absolute denial of petitioner's right to bail and petitioner's
32 right as a matter of due process of law to properly defend peti-

1 tioner against the charges which have been brought against peti-
2 tioner.

XLVII

3
4 That no previous application for a writ of habeas corpus has
5 been made in this matter to any other court except as hereinabove
6 alleged.

7 WHEREFORE, petitioner prays that a writ of habeas corpus may
8 issue directed to James J. Boyle, United States Marshal, Southern
9 District of California, Central Division, and to any other offi-
10 cers having custody of the body of your petitioner, commanding hi
11 to have the body of your petitioner produced before this Court at
12 a time and place to be specified, to do and receive what shall
13 then and there be considered concerning your petitioner together
14 with time and cause of petitioner's detention and said writ; and
15 that this honorable Court order and direct that petitioner be re-
16 leased from such custody forthwith upon such reasonable bail as
17 may be determined in the premises.

18 DATED: This 4th day of September, 1951.

19
20 (Filed Sept. 4, 1951)

21 51 Oleta O'Connor Yates
22
23
24
25
26
27
28
29
30
31
32

EXHIBIT A

The Pending Register of Federal Criminal Actions in the Central District was examined. Approximately 186 cases were bail cases. The only cases where bail was fixed at \$10,000 or more is the annexed list. Many of these annexed indictments contained more than one count.

<u>CHARGE</u>	<u>PENALTY</u>	<u>BAIL</u>
Mail fraud and conspiracy	5 years - \$10,000 (5 counts)	\$25,000
Failure to self-deport)	10 years	25,000
Failure to self-deport)	10 years	15,000
Concealing assets in bank	5 years - \$5,000	15,000
Transmission of threatening letters	5 years - \$1,000	15,000
Transmission of threatening letters	5 years - \$1,000	10,000
Perjury	5 years - \$2,000	10,000
Evasion of Income Tax	5 years - \$10,000	10,000
Firearms in Interstate Commerce	5 years - \$2,000	10,000
Robbery of United States Mail	10 years	10,000
Conspiracy to defraud Govt.	10 years - \$10,000	10,000 reduced to 5,000
Concealing assets	5 years - \$5,000	10,000

Smith Act Prosecutions in New York

(1) Dennis v. U. S. - 12 defendants

\$5,000 after indictment. After conviction - \$20,000 each - fixed by Circuit Court. Bail continued by Jackson, J., pending applications for writ (Williamson v. U. S., 95 L.Ed. Adv. 10)

EXHIBIT A

1 (2) U. S. v. Flynn, et al

2 Flynn, Perry, Gerson, Bachrach, Weinstock, Lannon,
3 Jerome, Weinstone, Charney, Begun, Johnson.
4 \$10,000 - Increase to \$50,000 sought, denied.
5 Jones, Gannet, and Bittelman - \$20,000 - In-
6 crease to \$75,000 sought, denied. Mindel
7 \$5,000 - Increase to \$50,000 sought, denied.
8 Amter - \$1,000 - no increase sought.

9 (3) Hawaii-U.S. v. Hall, et al

10 Bail fixed by Commissioner for 7 defendants at
11 \$75,000. Reduced by Judge Delbert E. Metzger,
12 to \$5,000. After indictment, bail fixed at
13 \$7,500.

14 (4) Pittsburgh-West Virginia-U.S. v. Nelson, et al

15 Bail fixed by Commissioner in sum of \$100,000.
16 Reduced by Judge William Kirkpatrick in Phila-
17 delphia to \$20,000.

18 (5) Baltimore-U.S. v. Frankfeld

19 Bail fixed by Commissioner at \$75,000. Reduced
20 for one defendant to \$5,000; second defendant
21 to \$17,500; third defendant to \$10,000.

22 Terminal Island Four

23 (Carlson v. U.S.)

24 Charge - Alien Communists and advocates of force
25 and violence. Pending deportation proceedings,
26 bail denied by Attorney General, District Court
27 and Circuit Court. On application for writ of
28 certiorari, bail in sum of \$5,000 unanimously
29 fixed by United States Supreme Court sitting
30 as entire body.

32 EXHIBIT A

EXHIBIT B

ANALYSIS

Of the approximately 186 cases examined July 30, 1951 (total in the Pending Register), about 175 fixed bail at less than \$10,000. The following is a tabulation:

<u>Bail</u>	<u>No. of Cases</u>
\$7,500	2
5,000	20
3,500	1
3,000	6
2,500	18
2,000	14
1,500	18
1,000	47
500	22
250	1
Own Recognizance	22

The cases where the penalty was 5 years and up totalled approximately 158 in number, or about 30% of the total number of cases. The average bail in all of the cases where the penalty was 5 years and up amounts to less than \$3,000.

1	CHARGE	PENALTY	COUNTS	BAIL
2	Transport stolen car	5 - \$5,000	1	\$2,000
3	Transport stolen car	5 - 5,000	1	5,000
4	Transport stolen car	5 - 5,000	1	1,000
5	Breaking into building			
6	used in part as			
7	Post Office	5 - 1,000	1	5,000
8	Mail fraud	5 - 1,000	11	5,000
9	Conspiracy; embezzle-			
10	ment funds National			
11	Bank	5 - 10,000	4	1,000
12	Theft from interstate			
13	shipment and re-			
14	ceiving stolen goods	10 - 5,000	12	5,000
15	Forging of postal			
16	saving certificates			
17	and uttering same	5 - 5,000	8	500
18	Failure to report for			
19	induction	5 - 10,000	1	1,500
20	Failure to report for			
21	induction	5 - 10,000	1	1,000
22	Theft of mail	5 - 2,000	1	1,000
23	Mail threatening			
24	letter	20 - 5,000	1	10,000*
25	Illegal possession of			
26	Marijuana	5 - 2,000	1	1,000
27	Fair Labor Standards Act	6 mos-10,000	14	Own Recognizance
28	Fair Labor Standards Act	6 mos-10,000	13	Own Recognizance
29	Fair Labor Standards Act	6 mos-10,000	10	Own Recognizance
30	Federal Food, Drug and			
31	Cosmetics Act (Adul-			
32	terated food in Int.Com.)	1 - 1,000	18	Own Recognizance

* Referred to
in Exhibit A

EXHIBIT "B"

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>RAIL</u>
2	Federal Food, Drug and			
3	Cosmetics Act (Adul-			
4	terated food in in-			
5	terstate commerce)	1 - 1,000	4	Own Recognizance
6	Forging Government Check	10 - 1,000	2	5,000
7	Obstruction of mail	5 - 2,000	2	5,000
8	Theft from interstate			
9	shipment	10 - 5,000	3	1,000
10	Theft on Government			
11	Reservation	5 - 5,000	2	500
12	Illegal wearing			
13	uniforms	6 - 250	1	1,000
14	Infringement of copy-			
15	righted movies	1 - 1,000	4	Own Recognizance
16	False claim for unem-			
17	ployment insurance			
18	benefits from R.R.			
19	retirement board	1 - 10,000	4	Own Recognizance
20	Transport stolen fire-			
21	arm	5 - 2,000	1	2,000
22	Failure to be inducted	5 - 10,000	1	1,000
23	Failure to be inducted	5 - 10,000	1	3,000
24	Forging and uttering			
25	Government check	10 - 1,000	2	1,000
26	Theft of mail	5 - 2,000	3	1,000
27	Theft of mail by			
28	postal employee	5 - 2,000	2	500
29	Theft of mail by			
30	postal employee	5 - 2,000	2	500
31	Theft of mail by			
32	postal employee	5 - 2,000	2	1,000

EXHIBIT "B"

1 The following are the cases in the Pending Register of Criminal
 2 Actions in Central District where the bail was below \$10,000:

3 <u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
4 Forgery	10- \$1,000	3	\$ 1,000
5 Passing altered money order	5- 5,000	2)	2,000
6 Forging and uttering U. S.			
7 Treasury check	10- 1,000	2	1,000
8 Forging and uttering check	5- 1,000	2	Own Recognizance
9 Forging and uttering check	5- 1,000	2	500
10 Forging and uttering			
11 Government obligation	5- 1,000	2.	1,000
12 Harboring and concealing			
13 aliens	5- 1,000	1	1,500
14 Possession and sale of			
15 narcotics	10- 5,000	2	500
16 Illegal wearing uniform,			
17 U.S. Army	6mos 250	1	500
18 Unlawful wearing U.S.			0.
19 Navy Uniform	6 mos 250	3	500
20 Forging and uttering			
21 Government draft	10- 1,000	2	1,000
22 Unlawful possession of			
23 ration points	1-10,000	1	5,000
24 Forgery, personation and			
25 Conspiracy	10-10,000	4	3,000
26 Forgery, personations and			
27 Conspiracy	10-10,000	4	2,000
28 Conspiracy, possession of			
29 writings and sugar stamps	5-10,000	5	5,000
30 Conspiracy, possession of			
31 writings and sugar stamps	5-10,000	5	Own Recognizance

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Buying and selling meat			
3	in excess of price			
4	control	5-\$10,000	5	\$ 5,000
5	Concealment of assets			
6	from trustee in			
7	bankruptcy	5- 5,000	3	10,000
8	Attempt to wreck a train	5- 5,000	1	5,000
9	Mailing scurrilous postal			
10	cards	5- 5,000	5	500
11	False claim of citizen-			
12	ship	5 10,000	1	2,500
13	Internal Revenue Code			
14	(Fraudulent income			
15	tax return)	5-10,000	4	
16	Failure to report for			
17	induction and to keep			
18	Board informed of			
19	address	5-10,000	2	2,500
20	Treason	death		No Bail
21	Transport stolen motor			
22	vehicle	5- 5,000	1	5,000
23	False claim of citizen-			
24	ship	5-10,000	1	500
25	Conspiracy and fraud			
26	vs. Government	5-10,000	24	10,000*
27				(on motion reduced to 5,000)
28	Mann Act	5- 5,000	1	1,000
29	Servicemen's Readjustment			
30	Act #44	1- 1,000	4	Own Recogni- zance
31	Transport stolen motor			
32	vehicle	5- 5,000	1	

* Referred to in Exhibit A

1. <u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Juvenile Delinquency			
3 Forgery U.S. Money Order)		1	
4 Mailing obscene letter	10- 5,000	1	\$ 2,500
5 Engage in business of			
6 purchasing spirits for			
7 resale without basic			
8 permit		2	2,500
9 Transport stolen motor			
10 vehicle	5- 5,000	1	
11 Forging and cashing			
12 Government bonds	10- 1,000	2	2,500
13 Theft of mail	5- 2,000	1	1,000
14 Forging Government			
15 Obligation	15- 5,000	1	500
16 Bank robbery, transport-			
17 ing interstate stolen			
18 money and flight to			
19 avoid prosecution	25-10,000	3	Held No Bond
20 Forging and uttering			
21 Government check	10- 1,000	2	1,000
22 Transporting stolen motor			
23 vehicle in foreign			
24 commerce	5- 5,000	1	3,000 (reduced to 2,000).
25			
26 Anti-trust conspiracy to			
27 fix, determine, establish			
28 and maintain noncompetitive			
29 prices, etc. of fire			
30 extinguishers	1- 5,000	1	Own Recogni- zance (later 1,000)
31			
32			

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Theft of Government			
3	property, forging			
4	and uttering Govern-			
5	ment checks	10- \$ 10,000	4	\$ 2,500
6	Sale and possession of			
7	narcotics	10- 5,000	2	2,500
8	Conspiracy, false state-			
9	ments to Government	5- 10,000	2	3,000
10	Purchase of narcotics,			
11	receiving and trans-			
12	porting narcotics	10- 5,000	2	2,500
13	Forging postal money			
14	order	5- 5,000	4	500
15	False statement in appli-			
16	cation for Survivors			
17	Insurance Benefits	1- 1,000	12	1,000
18	Evasion of Income Tax	5- 10,000	1-	1,000
19	Migratory	6 mos 500	1	
20	Embezzlement, abstraction,			
21	misapplication funds			
22	H.O.L.C., and false			
23	entry in book	5- 10,000	24	Own Recogni- zance (later 5,000)
24				
25	Evasion income taxes	5- 10,000	2	1,000
26				Released Own Recognizance on Motion
27	Evasion income taxes	5- 10,000	1	1,000
28	Misapplication and			
29	Embezzlement of National			
30	bank funds	5- 5,000	6	1,000
31	Evasion income taxes	5- 10,000	2	2,000
32				

1 CHARGE	PENALTY	COUNTS	BAIL
2 Evasion income taxes	5- \$10,000	2	Own Recongi- zance
3 Failure to file in- come tax return	1- 10,000	1	\$ 2,500 Released own recognizance
4			
5			
6 Forging and uttering			
7 goverment checks	10- 1,000	2	1,000
8 Transporting stolen			
9 car	5- 5,000	1	1,000
10 Transmission Inter-			
11 state threatening			
12 communications;			
13 mailing threatening			
14 letters	20- 5,000	4	15,000*
15 Sale of narcotics	10- 5,000	2	1,500
16 False statement in			
17 application for			
18 Federal Housing			
19 Loan		4	400
20 Conspiracy to defraud, make			
21 pass, utter and pub-			
22 lish statements re:			
23 FHA Title Loan application	5- 10,000	41	2,000
24 Conspiracy to defraud, make			
25 pass, utter pub-			
26 lish statements re:			
27 FHA Title Loan			
28 Application	5- 10,000	41	1,000
29 Perjury before ICC, making			
30 false statements on oath			
31 before examiner	5- 2,000	1	1,500
32 * Referred to in Exhibit A			

<u>1 CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2 Anti-trust, fixing			
3 prices for fish	1- \$ 5,000	2	\$ 1,000
4 Perjury; false state-			
5 ments to and con-			
6 cealing facts from			
7 Department of Army	5- 2,000	6	Own Recogni-
8 Official asking and			zance
9 accepting bribe	3-	14	1,000
10 Embezzlement and theft			
11 of U.S. property			
12 False documents			
13 Filed with Department			
14 of Agriculture	5- 10,000	28	Own Recogni-
15			zance then
16 Contempt, failure to			3,500
17 appear before Grand			
18 Jury		1	1,000
19 Forging U.S.			
20 Treasury Checks	10- 1,000	8	1,000
21 Concealment of narcotics	10- 5,000	1	2,000
22 Perjury committed before			
23 Federal Grand Jury	5- 2,000	1	5,000
24 Mail fraud and Conspiracy	5- 10,000	5	25,000*
25 Mail fraud and Conspiracy	5- 10,000	5	500
26			(vacated and
27			released on
28 Accessory to bank robbery			own recogni-
29 and receiving proceeds			zance)
30 thereof	12- 5,000	2	5,000
31 *Referred to in Exhibit A			

<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
1 Conspiracy to commit			
2 offenses in vio-			
3 lation of Title			
4 47, Sec. 605;			
5 (Unauthorized			
6 publication or use			
7 of communications)	5-\$10,000	1	\$ 7,500
8 Conspiracy to commit			
9 offenses in vio-			
10 lation of Title 47;			
11 Sec. 605; (Unauth-			
12 orized publication			
13 or use of communi-			
14 cations)	5- 10,000	1	1,000
15 Evasion of income tax	5- 10,000	3	1,500
16 Evasion of income tax	5- 10,000	2	1,500
17 Transport interstate			
18 of stolen auto	5- 5,000	1	3,000
19 Evasion of income tax	5- 10,000	1	1,000
20 Transport forged			
21 security			
22 interstate	10, 10,000	1	2,000
23 Mailing obscene			
24 matter	10- 5,000	13	2,000
25 Illegal impor-			
26 tation and			
27 concealment of			
28 narcotics	10- 5,000	2	2,500
29 Embezzlement and			
30 theft of U.S property	10- 10,000	20	Own Recogni-
31			zance
32			

1 CHARGE	PENALTY	COUNT	BAIL
2 Concealing assets and con-			
3 cealing records in con-			
4 tempt of Bankruptcy;			
5 Conspiracy; mail fraud	5- \$ 10,000	6	\$ 5,000
6 Misbranded device and drug			
7 in interstate commerce	1- 1,000	1	own recogni-
8 False claim of citizenship	5- 10,000	2	zance 7,500
9 Evasion income tax	5- 10,000	2	1,500
10 Transport stolen motor vehicle	5- 5,000	1	3,000
11 Ship misbranded drug in			
12 interstate commerce	1- 1,000	2	Own recogni-
13 Mail fraud	5- 1,000	17	zance 2,500
14 Robbery from mails	5- 10,000	1	10,000*
15 Evasion income tax	5- 10,000	4	1,500
16 Evasion income tax	5- 10,000	2	1,500
17 Evasion income tax	5- 10,000	2	1,500
18 Evasion income tax	5- 10,000	4	1,500
19 Evasion income tax	5- 10,000	4	1,500
20 Evasion income tax	5- 10,000	4	1,500
21 Conspiracy to commit offens-			
22 es, against U.S.; conspiracy			
23 to cause to be made false			
24 papers re: Veterans Eligi-			
25 bility for Home Loans under			
26 Servicemen's Readj. Act, 1944	5- 10,000	9	1,000
27 Evasion income tax	5- 10,000	4	1,500
28 Failure to register firearm;			
29 Interstate transport. unreg-			
30 istered Firearm	5- 2,000	2	10,000*
31 Interstate transport motor			
32 vehicle stolen	5- 5,000	1	2,000

*Referred to in Exhibit A

1	CHARGE	PENALTY	COUNTS	BAIL
2	Illegal sale of			
3	narcotics	5 - \$2,000	3	2,000
4	IRC - evasion of			
5	income tax;			
6	Making false statements			
7	(Mickey Cohen case)	5 - 10,000	5	10,000* (reduced to 5,000)
8				
9	IRC - evasion of			
10	income tax;			
11	Making false			
12	statements (Mickey			
13	Cohen case - wife).	5 - 10,000	1	2,500
14	Theft of mail,			
15	obstruction of			
16	correspondence	5 - 2,000	1	1,000
17	Transport stolen car	5 - 5,000	1	1,000
18	Theft of mail by			
19	postal employee	5 - 2,000	1	1,000
20	Failure to report for			
21	induction	5 - 10,000	1	5,000
22	Perjury committed before			
23	Grand Jury	5 - 2,000	2	10,000*
24	Obstruction of			
25	correspondence	5 - 500	1	2,000
26	Transport stolen auto	5 - 5,000	1	5,000
27	Failure to report for			
28	induction	5 - 10,000	1	2,500
29	Failure to file			
30	Questionnaire	5 - 1,000	2	2,500
31	* Referred to in			
32	Exhibit A			

EXHIBIT "B"

1	CHARGE	PENALTY	COUNTS	BAIL
2	Soliciting and attempt-			
3	ing to sell auto in			
4	excess of maximum			
5	ceiling price		4	500
6	Concealment of assets			
7	and records in bank-			
8	ruptcy; conspiracy,			
9	mail fraud	5 - 10,000	3	Own Recognizance
10	Failed and refused to			
11	be inducted	5 - 10,000	1	2,500
12	Illegal possession of			
13	Marijuana	5 - 2,000	1	1,500
14	Conspiracy to corruptly			
15	endeavor to influence			
16	a witness and solici-			
17	tation of a bribe by			
18	such witness	5 - 10,000	1	Own Recognizance
19	Failure to register			
20	firearm	5 - 2,000	1	1,000
21	Failure to register			
22	firearm	5 - 2,000	1	1,000
23	Servicemen's Readj.			
24	Act 1944	1 - 1,000	3	500
25	Transport Stolen Auto	5 - 5,000	1	1,000
26	Failure to report for			
27	induction	5 - 10,000	1	5,000 (reduced to 1,000)
28				
29	Theft of mail by			
30	postal employee	5 - 2,000	4	1,000
31	Theft of mail by			
32	postal employee	5 - 2,000	3	1,500

EXHIBIT "B"

1 UNITED STATES OF AMERICA }

2 Southern District of California)

ss.

3 JAMES J. BOYLE, United States Marshal for the Southern
4 District of California, being first duly sworn, on his oath
5 deposes and says:

6 That he is the person who makes the aforesaid return;
7 that he has read the same and knows the contents thereof, and
8 that the same is true according to the best of his knowledge and
9 belief.

10
11
12 /s/ James J. Boyle
13 JAMES J. BOYLE
14

15 SUBSCRIBED and SWORN to before me
16 this 6th day of September, 1951

17 EDMUND L. SMITH
18 Clerk, United States District Court
19 Southern District of California

20 By /s/ Charles A. Serty Deputy
21
22
23
24
25
26
27
28
29
30
31
32

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM SCHNEIDERMAN,
DOROTHY ROSENBLUM HEALEY,
ALBERT JASON LIMA,
OLETA O'CONNOR YATES,
CARL RUDE LAMBERT,
PHILIP MARSHALL CONNELLY,
ROSE CHERNIN KUSNITZ,
AL RICHMOND, also known as
Abraham Richman,
ERNEST OTTO FOX, also known as
Ernest Otto Fuchs,
HENRY STEINBERG,
LORETTA STARVUS STACK, and
MARY BERNADETTE DOYLE,

Defendants.

No. _____ CD
(U.S.C., Title 18, Sec. 11
1946 Ed. U.S.C., Title 18,
Sec. 371948 Ed.) Section 3
of the Smith Act, 54 Stat.
671 - Conspiracy to violate
the Smith Act)

I N D I C T M E N T

The grand jury charges:

(1) From and on or about April 1, 1945, and continuously, thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LIMA, OLETA O'CONNOR YATES, CARL RUDE LAMBERT, PHILIP MARSHALL CONNELLY, ROSE CHERNIN KUSNITZ, AL RICHMOND, also known as Abraham Richman, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, HENRY STEINBERG, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, the defendants herein, unlawfully, wilfully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stackel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the

1	<u>CHARGE</u>	<u>PENALTY</u>	<u>COUNTS</u>	<u>BAIL</u>
2	Failure to be inducted	5 - \$10,000	1	1,000
3	Embezzlement of funds			
4	National Bank	5 - 5,000	4	1,000
5	Forging and uttering			
6	forged Postal			
7	Money Order	5 - 5,000	2	250
8	Forging Government Check	10 - 1,000	3	1,500
9	Failure to register			
10	firearm	5 - 2,000	1	1,000
11	Causing false claim to			
12	be made to Veterans'			
13	Administration re:			
14	Appraisal	1 - 1,000	1	Own recognizance
15	False claim for unemploy-			
16	ment insurance benefits			
17	R.R. retirement board	1 - 10,000	2	Own recognizance then 500
18				
19	False claim for unemploy-			
20	ment insurance R.R. retire-			
21	ment board	1 - 10,000	4	Own Recognizance then 500
22				
23	Juvenile delinquency			
24	transfer of marijuana		1	500
25	Illegal sale of marijuana	5 - 2,000	2	2,500
26	Forging and uttering			
27	Government check	10 - 1,000	2	1,000
28	Embezzlement of funds			
29	of National Bank	5 - 500	4	Own recognizance
30				
31				
32				

EXHIBIT "B"

1	CHARGE	PENALTY	COUNTS	BAIL
2	Interstate transport			
3	falsely made			
4	security	10 - \$10,000	1	2,500
5	False claim unemploy-			
6	ment insurance bene-			
7	fits R.R. retirement			
8	board	1 - 10,000	4	Own Recognizance then 500
9	Impersonation as			
10	Federal Officer	3 - 1,000	4	5,000
11	Theft of mail by			
12	postal employee	5 - 2,000	2	500
13	Illegal wearing Marine			
14	Corps uniform	6 mos. - 500	1	500
15	False claim of citi-			
16	zenship	3 - 1,000	1	1,000
17	Theft of mail by			
18	Postal employee	5 - 2,000	2	500
19	Illegal sale and			
20	Possession of			
21	Marijuana	5 - 2,000	2	2,000
22	Theft of mail by			
23	Postal employee	5 - 2,000	2	3,000
24	Theft of Government			
25	property	10 - 10,000	4	1,000
26	Illegal possession			
27	of Marijuana	5 - 2,000	1	1,000
28	Conspiracy to de-			
29	fraud and commit			
30	offense - kick -			
31	backs on sub-			
32	contracts	2 - 10,000	9	2,500

EXHIBIT "B"

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

No. 21883-Crim.

Plaintiff,

vs.

O R D E R

WILLIAM SCHNEIDERMAN, et al.,

Defendants,

Pursuant to stipulation of the parties hereto, the United States Marshal IS HEREBY ORDERED AND DIRECTED to take the steps necessary to permit each and all of the defendants in the above-entitled matter to have the following conditions for preparation for trial:

1. Upon one days notice, or upon being furnished a schedule in advance, the said defendants shall be permitted to work with their attorneys on the preparation of their case at any and all times between the hours of 9:00 a.m. to 5:00 p.m., Mondays through Fridays, inclusive, in Room 243B of the Federal Building in the city of Los Angeles, or at such place as the United States Marshall shall select. An attorney for said defendants need not be present at all times during the time that the defendants are so working on the preparation of their case for trial.

2. During the time that the defendants are so working

1 they may have brought to them their meals at their own expense.

2 3. The defendants shall be allowed to bring into said
3 room and to maintain there such books, documents, pamphlets,
4 and similar written or printed material as they shall desire,
5 without censorship of any kind as to content, and the defendants
6 shall be permitted to make and keep in said room and to deliver
7 to their attorneys such notes, memoranda and documents as they
8 desire, without censorship of any kind as to content. In
9 addition, the defendants shall be permitted to bring to said
10 room and keep there such office equipment as typewriters, and
11 such office supplies as paper, carbon paper, pencils, pens, ink,
12 etc.; provided, however, that none of the foregoing is intended
13 to deprive the United States Marshal of the right to see to it
14 that nothing other than materials of the kind permitted by this
15 order are brought in.

16 4. For the purpose of dealing with problems relating
17 to their defense, the defendants shall be allowed, in the
18 presence of an attorney, to visit and confer with such persons
19 as the attorney shall designate; provided, however, that such
20 person shall furnish to the United States Marshal his name,
21 address, criminal record if any, and general occupation.

22
23 DATED this 21st day of August, 1951.

24
25
26
27 United States District Judge

28
29 PRESENTED BY:

30
31 WALTER S. BINNS
32 Chief Assistant U. S. Attorney

1 MARGOLIS and McTERNAN
112 West Ninth Street
2 Los Angeles 15, California
Vandike 7183
3 and
4 LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
5 Hightower 4-1707

6 Attorneys for Petitioner

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10 CENTRAL DIVISION

11 **OLETA O'CONNOR YATES,**

12 Petitioner,

13 vs.

14 JAMES J. BOYLE, United States Marshal,
15 Respondent.

No. ~~13444-C~~

ORDER TO SHOW CAUSE WHY
WRIT OF HABEAS CORPUS
SHOULD NOT ISSUE

16 Upon reading the verified petition of the petitioner on
17 file herein,

18 IT IS HEREBY ORDERED that James J. Boyle, United States Marshal
19 for the Southern District of California appear before the above
20 entitled Court in the courtroom of the Honorable
21 at the United States Post Office and Court House Building, 312 North
22 Spring Street, Los Angeles, California, on the 6th Day of September
23 1951, at 2 P.M. of said day, then and there to show cause if any he
24 may have why he should not release from his custody or the custody
25 such officers or agents as may have the same for and on his behalf,
26 the body of **Oleta O'Connor Yates**, petitioner herein, upon
27 such reasonable bail as may be determined by this Court.

28 Good cause being shown therefor, it is hereby ordered that
29 this Order and the said petition may be served upon the respondent
30 herein on or before September 4, 1951 at 2 P.M. of said day.

31 DATED: This 4th day of September, 1951.

32 /s/ Ben Harrison

JUDGE OF THE U.S. DISTRICT COURT

1 ERNEST A. TOLIN
United States Attorney
2 RAY H. KINNISON
Assistant U. S. Attorney
3 Chief of Criminal Division

4 600 Federal Building
Los Angeles 12, California
5 Telephone: MADison 7411

6 Attorneys for Respondent

7 IN THE UNITED STATES DISTRICT COURT
8 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
9 CENTRAL DIVISION

10 **OLNEY S. CONNOR YATES**

11
12 Petitioner,

13 vs.

14 JAMES J. BOYLE, United
15 States Marshal,

16 Respondent.

NO. 18444-C

RETURN TO WRIT OF HABEAS CORPUS

17 I, JAMES J. BOYLE, United States Marshal for the Southern District of
18 California, respondent herein, on behalf of myself and each and all of my agents
19 and deputies, respectfully make the following return and answer to this Honorable
20 Court, to the writ of habeas corpus issued pursuant to the petition for writ of
21 habeas corpus in the above case:

22 I

OLNEY S. CONNOR YATES

23 That the petitioner, OLNEY S. CONNOR YATES, is not unlawfully
24 imprisoned or restrained of his liberty, and his imprisonment and detention
25 are not illegal, arbitrary or a denial of rights secured to him by the Constitu-
26 tion of the United States, but said petitioner is in my custody under proper and
27 lawful authority.

28 II

29 That said petitioner was taken into custody on July 26, 1951, in the
30 City of San Francisco, State of California, by Special Agents of the Federal
31 Bureau of Investigation, upon a warrant issued on July 25, 1951, by Howard V.
32 Calverley, United States Commissioner for the Southern District of California.

1 pursuant to a verified complaint charging said petitioner and one William
2 Schneiderman with conspiracy to commit offenses against the United States pro-
3 hibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10,
4 and 18 U.S.C. (1948 Ed.) 2385.

5 III

6 That following said petitioner's arrest ~~she~~ was taken without delay
7 on July 26, 1951, before the nearest United States Commissioner, namely, Honorable
8 Francis St. J. Fox, at San Francisco, California, who then and there arraigned
9 said petitioner and set bail in the amount of \$7,500 pending removal to
10 this district. Thereafter, on or about the 27th day of July, 1951, an applica-
11 tion was made to the Honorable Louis E. Goodman, Judge of the United States
12 District Court for the Northern Dis trict of California, for increase of said
13 bail. Following a full hearing on said application, said District Judge modified
14 the order of the Commissioner, and increased bail of the petitioner to
15 the sum of \$50,000 pending removal of the petitioner to this district, and in
16 default thereof ordered the petitioner committed to the custody of the United
17 States Marshall in San Francisco, California. Thereafter, on July 28, 1951,
18 the petitioner herein filed a petition for writ of habeas corpus, which petition
19 was heard by the Honorable Louis E. Goodman, Judge of the United States District
20 Court for the Northern District of California, for the purpose of obtaining a
21 further reduction of bail. This petition was denied.

22 IV

23 The grand jury for the Southern District of California, in and for the
24 Central Division, met on the 27th, 30th, and 31st days of July, 1951, and, after
25 hearing the evidence presented, did on the 31st day of July, 1951, return an in-
26 dictment against the petitioner herein and eleven other named defendants, a ce-
27 tified copy of which is attached hereto as Exhibit "A". That said grand jury re-
28 commended bail in the amount of \$75,000 for the petitioner herein and, on the
29 return of the indictment, said amount of bail was approved by Judge James M.
30 Carter, before whom the said indictment was returned. On August 1, 1951, fol-
31 lowing the return of the indictment herein, the petitioner was removed from the
32 City and County of San Francisco and brought to the County of Los Angeles, where

1 ~~has~~ custody was delivered to the respondent herein, James J. Boyle, United
2 States Marshal for the Southern District of California.

3 V

4 On the 2nd day of August, 1951, the petitioner herein was arraigned
5 on said indictment and, at the request of petitioner herein, the plea on said
6 indictment was continued until the 13th day of August, 1951. On the 13th day of
7 August, 1951, at the petitioner's request, the plea on said indictment was again
8 continued until the 20th day of August, 1951. On the 16th day of August, 1951,
9 on petitioner's request, the Order setting said matter for plea on August 20th,
10 1951, was vacated and the plea on said indictment was again continued, at peti-
11 tioner's request, until the 22nd day of August, 1951. On August 22nd, 1951, the
12 plea was continued to August 29th, 1951, and on August 29th, 1951, the petitioner
13 herein entered a plea of not guilty before the Honorable Wm. C. Mathes, to whose
14 Court the cause was transferred for all further proceedings.

VI

Following the proceedings set forth in paragraphs IX to XIX of the petition herein and after the opinion by the United States Court of Appeals for the Ninth Circuit in the case of Philip Marshall Connelly, petitioner, v. The United States District Court in and for the Southern District of California, Central Division, and Honorable James M. Carter, Judge thereof, respondents (No. 13053, decided August 24, 1951), was rendered, Judge James M. Carter did, on the 29th day of August, 1951, disqualify himself as to both Philip Marshall Connelly and the petitioner herein, and transferred all proceedings in said case of United States v. Schneiderman, et al., to Judge Paul J. McCormick, Presiding Judge of the United States District Court for the Southern District of California. Judge Paul J. McCormick on the same date assigned said case to Judge Wm. C. Mathes for all further proceedings. Thereafter, on the 29th day of August, 1951, a motion was made before the Honorable Wm. C. Mathes to reduce the bail of the petitioner herein, and following a full hearing lasting two days an order was made on August 30, 1951, reducing the amount of bail set on said indictment to the sum of \$50,000. That petitioner has not given such bail and is detained by respondent pursuant to the proceedings aforesaid; that in said hearings before Judges Wm. C. Mathes and Louis E. Goodman the same matters were raised as are raised in the said petition, and said matters have already been litigated.

VII

That the order of said Judge William C. Mathes fixing bail in the amount of \$50,000 does not, under the circumstances herein involved, constitute an excessive requirement of bail in accordance with the Eighth Amendment of the Constitution of the United States, and does not amount to a violation of said Amendment or the Fifth Amendment thereto, and does not show any abuse of discretion by said Judge William C. Mathes.

VIII

That named in the indictment above-mentioned, as unindicted co-conspirators with the petitioner herein, are: Robert G. Thompson, Henry Winston, Gilbert Green, and Gus Hall. That the said last-named individuals were defendants

1 in the case of United States v. Dennis, et al., who were convicted in the
2 Southern District of New York on a violation of the same Act under which the
3 above-mentioned indictment was returned, and which conviction was, on June 4,
4 1951, affirmed by the Supreme Court of the United States. That, thereafter,
5 said last-named persons failed to appear and surrender to serve the sentence
6 theretofore imposed and on July 2, 1951, bench warrants were ordered issued by
7 the United States District Court for the Southern District of New York for said
8 persons, and on July 3, 1951, the bonds theretofore posted (referred to in the
9 petition herein) by said persons were ordered forfeited by that court. The
10 nature of the offense charged in the indictment herein is the incitement of
11 rebellion looking to the overthrow of the government of the United States by
12 force and violence and disloyalty to the United States. Under the facts and
13 circumstances here involved the defendants in said indictment, including the
14 petitioner herein, lack the usual incentive of respect to said government.
15 Your respondent alleges that the petitioner herein is a poor security risk
16 and that unless a substantial bail is required of said petitioner, said
17 petitioner would not appear to answer the charges contained in the indictment
18 herein.

19 IX

20 That in none of the cases mentioned in EXHIBITS "A" and "B" of the peti-
21 tion herein, save and except the two New York cases of United States v. Dennis
22 and United States v. Flynn, is the charge the same as is contained in the indict-
23 ment herein, all of said cases being routine cases involving violations of
24 various federal statutes.

25 WHEREFORE, the respondent, James J. Boyle, United States Marshall for
26 the Southern District of California, having made due and full answer to the writ
27 of habeas corpus heretofore issued herein, pursuant to the petition for writ of
28 habeas corpus, respectfully prays that the petition for writ of habeas corpus
29 be dismissed and that the petitioner, Olga O'Connor Yates, be remanded to re-
30 spondent's custody to be dealt with according to the laws of the United States
31 of America.

32

/s/ James J. Boyle
JAMES J. BOYLE
United States Marshal for the
Southern District of California

1 OLETA O'CONNOR YATES,

2 Petitioner,

No. 13444-BH

3 vs.

4 JAMES J. BOYLE, United
5 States Marshal,

6 Respondent.

7 ROSE CHERNIN KUSNITZ,

8 Petitioner,

No. 13445-BH

9 vs.

10 JAMES J. BOYLE, United
11 States Marshal,

12 Respondent.

13 MARY BERNADETTE DOYLE,

14 Petitioner,

No. 13446-BH

15 vs.

16 JAMES J. BOYLE, United
17 States Marshal,

18 Respondent.

19 ALBERT JASON LIMA,

20 Petitioner,

No. 13447-BH

21 vs.

22 JAMES J. BOYLE, United
23 States Marshal,

24 Respondent.

25
26 MEMORANDUM OPINION

27
28 The above petitions for writs of habeas corpus were con-
29 solidated for hearing and the sole question for this court to de-
30 termine in each matter is whether the bail of \$50,000 is excessive,
31 and by reason thereof petitioners are unlawfully deprived of their
32 liberty contrary to the provisions of the Eighth Amendment to the

1 Constitution of the United States.

2 It appears from the records of this court and the tran-
3 script of various proceedings that the question of bail as to some
4 of the petitioners has been before two district judges of this dis-
5 trict, one in San Francisco (Judge Goodman), and one in New York
6 (Judge Dimock). (See Cr. file No. 21883 of this district).

7 Now through these proceedings petitioners seek to have
8 me ignore the record, absolutely strike from my mind the separate
9 rulings by four district judges, and indirectly hold that the bail
10 fixed is excessive and each of said judges has abused the dis-
11 cretion vested in him.

12 Counsel for petitioners claim that bail in excess of
13 \$5,000 would be prohibitive, therefore, the court should fix bail
14 in that amount. In other words, petitioners contend that bail
15 should be fixed in accordance with their ability to furnish bail.
16 To follow their argument to a natural conclusion, if they could
17 raise bail in an amount not in excess of \$10, the bail should be
18 so fixed. If such a rule were adopted all prisoners now waiting
19 for trial on bailable offenses would be entitled to have bail
20 fixed in accordance with their respective abilities.

21 As stated in U. S. ex rel. Rubinstein v. Mulcahy etc.,
22 155 F. (2d) 1002: "The purpose of bail before trial is to insure
23 the presence of the accused when required without the hardship of
24 incarceration before guilt has been proved and while the presump-
25 tion of innocence is to be given effect." (See also Rule 46(c)
26 F.R.C.P.).

27 How much should the bail of petitioners be to meet the
28 requirements of the foregoing quotation? The Grand Jury that heard
29 the evidence recommended \$75,000. How can I say that all who have
30 exercised their discretion are wrong because I may or may not agree
31 with them?

32 When a person is released on bail before trial such per-

Smith Act 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, by so conspiring (1) unlawfully, wilfully, and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, and (2) unlawfully, wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

(2) It was part of said conspiracy that said defendants and co-conspirators would become members, officers, and functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume Leadership in said Party and responsibility for carrying out its policies and activities up to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party, concentrating on recruiting persons employed in key basic industries and plants.

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America including, but not limited to,

"Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct and cause to be conducted schools and classes for indoctrination of recruits and members of said Party in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names, passports, and other false documents in order to conceal their identities and activities as members and functionaries of said party;

(9) It was further a part of said conspiracy that said defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of California, the defendants and co-conspirators did commit, among others, the following

OVERT ACTS:

1. On or about July 17 and 18, 1948, WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, ALBERT JASON LINA, GLETA O'CONNOR YATES, CARL RUDE LAMBERT, AL RICHMOND, also known as Abraham Richman, LORETTA STARVUS STACK, and MARY BERNADETTE DOYLE, defendants herein, did attend and participate in a Convention of

the Communist Party of the State of California at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

2. On or about August 20, 1948, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

3. On or about August 21, 1948, LORETTA STARVUS STACK, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

4. On or about August 21, 1948, AL RICHMOND, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

5. On or about January 21, 1949, HENRY SPINBERG, a defendant herein, did attend and participate in a meeting;

6. On or about May 20, 1949, ROSE CHERNIN KUSNITZ, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

7. On or about December 7, 1949, WILLIAM SCHNEIDERMAN and DOROTHY ROSENBLUM HEALEY, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

8. On or about January 20, 1950 WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9. On or about February 15, 1950, MARY BERNADETTE DOYLE, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California;

10. On or about April 6, 1950, WILLIAM SCHNEIDERMAN, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

11. On or about June 12, 1950, ALBERT JASON LINE, a defendant herein, did attend and participate in a meeting at

2200 West Seventh Street, Los Angeles, California;

12. On or about June 24, 1950, PHILIP MARSHALL CONNELLY, MARY BERNADETTE DOYLE, and ALBERT JASON LIVA, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

13. On or about November, 1950, ERNEST OTTO FOX, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

14. On or about April 9, 1951, CARL RUDE LAMBERT, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

15. On or about July 24, 1951, OLITA O'CONNOR YATES, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A TRUE BILL

ERNEST A. TOLIN,
United States Attorney.

Foreman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

LORETTA STARVUS STACK,
Petitioner,
vs.
JAMES J. BOYLE, United
States Marshal,
Respondent.

No. 13436

AL RICHMOND,
Petitioner,
vs.
JAMES J. BOYLE, United
States Marshal,
Respondent.

No. 13437

PHILIP MARSHALL CONNELLY,
Petitioner,
vs.
JAMES J. BOYLE, United
States Marshal,
Respondent.

No. 13 438

1 DOROTHY ROSENBLUM HEALEY,

2 Petitioner,

3 vs.

No. 13439.

4 JAMES J. BOYLE, United
5 States Marshal,

6 Respondent.

7 ERNEST OTTO FOX,

8 Petitioner,

9 vs.

No. 13440

10 JAMES J. BOYLE, United
11 States Marshal,

12 Respondent.

13 WILLIAM SCHNEIDERMAN,

14 Petitioner,

15 vs.

No. 13441

16 JAMES J. BOYLE, United
17 States Marshal,

18 Respondent.

19 CARL RUDE LAMBERT,

20 Petitioner,

21 vs.

No. 13442

22 JAMES J. BOYLE, United
23 States Marshal,

24 Respondent.

25 HENRY STEINBERG,

26 Petitioner,

27 vs.

No. 13443

28 JAMES J. BOYLE, United
29 States Marshal,

30 Respondent.

31

32

1 a joint petition for writ of habeas corpus.

2 DATED: This 8th day of September, 1951.

3
4 /s/ Ben Margolis

5 Ben Margolis

6
7 /s/ Daniel G. Marshall

8 Daniel G. Marshall

9 Attorneys for Petitioner Philip
Marshall Connolly.

10
11 MARGOLIS and McTERNAN

12 By /s/ Ben Margolis
Ben Margolis

13 /s/ Leo A. Sullivan

14 Leo A. Sullivan

15 Attorneys for remaining Petitioners

16
17 ERNEST A. TOLIN
United States Attorney

18 By /s/ Ray H. Kinnison

19 Ray H. Kinnison
Assistant United States Attorney

20 Attorneys for Respondant

21
22
23 ORDER:

24 It is so ordered.

25
26 /s/ Ben Harrison

27 JUDGE of the United States District Court

1
2
3
4
5
6
7
8 IN THE DISTRICT COURT OF THE UNITED STATES
9 SOUTHERN DISTRICT OF CALIFORNIA
10 CENTRAL DIVISION
11

12 LORETTA STARVUS STACK,

13 Petitioner,

No. 13436-BH

14 vs.

15 JAMES J. BOYLE, United
16 States Marshal,

Respondent.
17

18 AL RICHMOND,

19 Petitioner,

No. 13437-BH

20 vs.

21 JAMES J. BOYLE, United
22 States Marshal,

Respondent.
23

24 PHILIP MARSHALL CONNELLY,

25 Petitioner,

No. 13438-BH

26 vs.

27 JAMES J. BOYLE, United
28 States Marshal,

Respondent.
29

1 DOROTHY ROSENBLUM HEALEY,

2 Petitioner,

No. 13439-BH

3 vs.

4 JAMES J. BOYLE, United
States Marshal,

5 Respondent.
6

7 ERNEST OTTO FOX,

8 Petitioner,

No. 13440-BH

9 vs.

10 JAMES J. BOYLE, United
States Marshal,

11 Respondent.
12

13 WILLIAM SCHNEIDERMAN,

14 Petitioner,

No. 13441-BH

15 vs.

16 JAMES J. BOYLE, United
States Marshal,

17 Respondent.
18

19 CARL RUDE LAMBERT,

20 Petitioner,

No. 13442-BH

21 vs.

22 JAMES J. BOYLE, United
States Marshal,

23 Respondent.
24

25 HENRY STEINBERG,

26 Petitioner,

No. 13443-BH

27 vs.

28 JAMES J. BOYLE, United
States Marshal,

29 Respondent.
30

31

32

1 son is a calculated risk and the amount of bail resolves itself
2 into a matter of judgment. Sometimes the courts are wrong but
3 fortunately the defendants usually appear. The offenses charged
4 are very serious and the court realizes as a matter of common
5 knowledge that those charged with similar and related offenses the
6 forfeitures have been above average and apprehension after for-
7 feiture has been nil. Should the court ignore these facts?

8 Perhaps through these proceedings our reviewing courts
9 can furnish the trial courts with a yardstick to determine the
10 amount of bail required to assure the presence at the time of
11 trial of the petitioners and others similarly charged. My only
12 hope is that their judgment on such calculated risks may be cor-
13 rect.

14 I have ordered the transcript of the proceedings before
15 Judge Mathes filed as an exhibit in these proceedings, together
16 with the records of the court on the motions for reduction of bail
17 before him in the criminal case, and have admitted in evidence the
18 transcript of the proceedings in Healey et al. v. Boyle; No. 13361
19 to No. 13370. I have examined such proceedings and have consid-
20 ered the same and am unable to conclude that the amount of bail,
21 fixed in each instance is either arbitrary or the result of an
22 abuse of discretion. I further find that such amounts as were
23 fixed are necessary to assure the presence of the petitioners in
24 the further proceedings in the criminal case and for no other pur-
25 pose.

26 The procedure followed in these matters is that outlined
27 in the Rubenstein case (155 F. (2d) 1002). The record herein in-
28 dicates that such procedure is cumbersome and unnecessarily delays
29 the ultimate disposition of matters that are entitled to expedi-
30 tious action by the courts.

31 I make these comments not in criticism of the present
32 method but rather as an invitation to our reviewing courts to

1 provide a more expeditious procedure. With my ruling in this case,
2 five district judges have passed on the reasonableness of the
3 amount of bail. If we are in error petitioners have had to
4 languish in jail to meet the requirements of legal formalism.

5 The petition for writ of habeas corpus in each matter is
6 hereby denied and the petition in each instance is hereby dis-
7 missed.

8 The government is ordered to submit forthwith proposed
9 order of dismissal of said petitions.

10 DATED: This 12th day of September, 1951.

11
12 /s/ Ben Harrison

13 JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1 ERNEST A. TOLIN
United States Attorney
2
3 RAY H. KINNISON
Assistant U. S. Attorney
Chief of Criminal Division
4
5 600 Federal Building
Los Angeles 12, California
Telephone: MADISON 7411
6
7 Attorneys for Respondent
8

9 IN THE UNITED STATES DISTRICT COURT
10 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11 CENTRAL DIVISION

12 LORETTA STARVUS STACK, AL
RICHMOND, PHILIP MARSHALL
13 CONNELLY, DOROTHY ROSENBLUM
HEALEY, ERNEST OTTO FOX,
14 WILLIAM SCHNEIDERMAN, CARL
RUDE LAMBERT, HENRY STEINBERG,
15 OLETA O'CONNOR YATES, ROSE
CHERNIN KUSNITZ, MARY BERNADETTE
16 DOYLE, and ALBERT JASON LIMA,

17 Petitioners,

18 v.

19 JAMES J. BOYLE, United
States Marshal,
20

21 Respondent.

Nos. 13436/13447

ORDER DENYING PETITIONS FOR
WRITS OF HABEAS CORPUS AND
DISCHARGING ORDERS TO SHOW
CAUSE WHY WRITS OF HABEAS
CORPUS SHOULD NOT BE GRANTED

22 The above-entitled matters came on regularly for hearing on
23 September 6, 1951, before the Honorable Ben Harrison, Judge presid-
24 ing, on Orders to Show Cause Why Writs of Habeas Corpus should not
25 be granted, the petitioner Philip Marshall Connelly being represent-
26 ed by his attorneys, Ben Margolis, Esq., and Daniel G. Marshall,
27 Esq. and the remaining petitioners by their attorneys Margolis and
28 McTernan, Esq., by Ben Margolis, Esq., and the respondent, James
29 J. Boyle, being represented by his counsel, Ernest A. Tolin, United
30 States Attorney for the Southern District of California, and Ray H.
31 Kinnison, Assistant United States Attorney for the Southern District
32 of California, and A. L. Wirin, Esq., appearing as amicus curiae; the

1 Court having ordered upon the stipulation of the attorneys for the
2 respective parties that the petitions for writs of habeas corpus
3 be consolidated and treated as a joint petition for writ of habeas
4 corpus; and the Court having read the petitions for Writs of Habeas
5 Corpus on file, the Return thereto filed by the respondent to said
6 petitions for Writs of Habeas Corpus herein; and the Court finding
7 that on July 31, 1951, and prior to the hearing herein, a True Bill
8 of indictment was returned in this Court before Judge James M.
9 Carter, by the Grand Jury for the Southern District of California,
10 charging the petitioners and others with conspiracy to commit of-
11 fenses against the United States prohibited by Section 2 of the
12 Smith Act, 54 Stat. 671, 18 U.S.C. (1946 ed.) 10, and 18 U.S.C.
13 (1948 ed.) 2385, and said indictment having been ordered filed
14 under Case No. 21883-CD, and on recommendation of said Grand Jury,
15 Judge James M. Carter then set bail for the petitioner William
16 Schneiderman in the amount of \$100,000 and in the amount of \$75,000
17 for the remaining petitioners, and thereafter, on the 7th day of
18 August, 1951, petitioners filed with said Judge James M. Carter a
19 motion to reduce the amount of bail; that the said Judge James M.
20 Carter on August 29, 1951 disqualified himself from any further
21 proceedings in the prosecution of the petitioners herein including
22 proceedings on bail; that the said proceedings were then assigned
23 by Chief Judge Paul J. McCormick to Judge William C. Mathes and the
24 aforesaid motions to reduce bail came on for hearing before the said
25 Judge William C. Mathes, and following a full hearing on said motions
26 Judge William C. Mathes on August 30, 1951 did reduce the amount of
27 bail for each of the petitioners to \$50,000, and the Court having
28 taken testimony on the petition herein and having heard arguments,
29 and the Court being fully advised in the premises, and it appearing
30 to the satisfaction of the Court, and the Court finding for the
31 reasons aforesaid that the relief prayed for in the aforesaid peti-
32 tions for Writs of Habeas Corpus should not be granted, that the

1 orders to show cause why the petitions for writ of habeas corpus
2 should not be granted should be discharged, and that said Petitions
3 for Writs of Habeas Corpus should be denied, and said cause having
4 been submitted to the Court for decision;

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the aforesaid
6 Petitions for Writs of Habeas Corpus heretofore filed in the above
7 entitled matters be, and the same hereby are, denied; and

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid
9 Orders to show Cause why the Petitions for Writs should not be
10 granted be, and the same hereby, are discharged.

11 DATED: This 12th day of September, 1951.

12
13 /s/ Ben Harrison
14 United States District Judge

15 Received copy of the within
16 Order Denying Petitions for
17 Writs of Habeas Corpus, Dis-
18 charging Orders to Show Cause,
19 and Dismissing Writ of Habeas
20 Corpus this 12th day of Septem-
21 ber, 1951, and approved as to
22 form.

23 Ben Margolis

24 Daniel G. Marshall

25 Attorneys for Petitioner Philip
26 Marshall Connelly

27 MARGOLIS and McTERNAN

28 By Ben Margolis

29 Attorneys for remaining Petitioners

1 Ben Margolis
112 West Ninth Street
2 Los Angeles 15, California
Vandike 7153
3 and
4 Daniel G. Marshall
458 South Spring Street
5 Los Angeles 13, California
Trinity 6011

Margolis and McTernan
112 West Ninth Street
Los Angeles 15, California
Vandike 7153
and
Leo A. Sullivan
1440 Broadway Street
Oakland, California
Hightower 4-1707

6 Attorneys for Petitioner-
Appellant Philip Marshall Connolly

Attorneys for remaining
Petitioners-Appellants

8 IN THE UNITED STATES DISTRICT COURT
9 IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10 CENTRAL DIVISION

11
12 LORETTA STARVUS STACK, AL
13 RICHMOND, PHILIP MARSHALL
14 CONNELLY, DOROTHY ROSENBLUM
HEALEY, ERNEST OTTO FOX,
15 WILLIAM SCHNEIDERMAN, CARL
RUDE LAMBERT, HENRY STEINBERG,
OLETA O'CONNOR YATES, ROSE
16 CHERNIN KUSNITZ, MARY BERNADETTE
DOYLE and ALBERT JASON LIMA;

17 Petitioners-Appellants,

18 vs.

19 JAMES J. BOYLE, United States
Marshal,

20 Respondent.
21

Nos. 13436/13447

22 NOTICE OF APPEAL

23 NOTICE IS HEREBY GIVEN that the petitioners-appellants
24 above named hereby appeal to the United States Court of Appeals
25 for the Ninth Circuit from the order denying the petitions for
26 writs of habeas corpus herein and discharging the orders to
27 show cause why the petitions for writs should not be granted,
28 made and entered in this action by the United States District
29 Court, Honorable Ben Harrison, Judge Presiding, on the 6th day
30 of September, 1951.

31 DATED: This 12th day of September, 1951.
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

/s/ Ben Margolis
Ben Margolis

/s/ Daniel G. Marshall
Daniel G. Marshall

Attorneys for Petitioner-Appellant
Philip Marshall Connelly

MARGOLIS and McTERNAN

By /s/ Ben Margolis
Ben Margolis

/s/ Leo A. Sullivan
Leo A. Sullivan

Attorneys for remaining Petitioners-
Appellants

1 BEN MARGOLIS
2 112 West Ninth Street
3 Los Angeles 15, California
4 VAndike 7153

5 and
6 DANIEL G. MARSHALL
7 458 South Spring Street
8 Los Angeles 13, California
9 TRinity 6011

10 Attorneys for Petitioner
11 Philip Marshall Connelly

MARGOLIS and McTERNAN
112 West Ninth Street
Los Angeles 15, California
VAndike 7153

and
LEO A. SULLIVAN
1440 Broadway Street
Oakland, California
Hightower 4-1707

Attorneys for remaining
Petitioners

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

LORETTA STARVUS STACK, AL
RICHMOND, PHILIP MARSHALL,
CONNELLY, DOROTHY ROSENBLUM
HEALEY, ERNEST OTTO FOX,
WILLIAM SCHNEIDERMAN, CARL
RUDE LAMBERT, HENRY STEINBERG,
OLETA O'CONNOR YATES, ROSE
CHERNIN KUSNITZ, MARY BERNADETTE
DOYLE and ALBERT JASON LIMA,

Petitioners,

.vs.

JAMES J. BOYLE, United
States Marshal,

Respondent.

Nos. 13436/13447

DESIGNATION OF RECORD

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION: ERNEST A. TOLIN,
UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

The petitioners above named designate for inclusion in the
record on appeal herein a complete record of all the proceedings
and evidence in the above entitled causes including the petitions
for writs of habeas corpus, the orders to show cause, the stipula-
tion and order treating the petitions as a joint petition for writ
of habeas corpus, the return of the respondent, the reporter's
transcript of hearing on September 6, 1951, the order denying the
petitions and discharging the orders to show cause, the notice of

1 appeal, this designation of the record and any stipulations
2 between the parties relative to the record on appeal herein or
3 the argument of the appeal.

4 DATED: September 12, 1951.

5
6 /s/ Ben Margolis
Ben Margolis

7 /s/ Daniel G. Marshall
8 Daniel G. Marshall

9 Attorneys for Petitioner Philip
10 Marshall Connelly

11 MARGOLIS and McTERNAN

12 By /s/ Ben Margolis
Ben Margolis

13
14 /s/ Leo A. Sullivan
Leo A. Sullivan

15 Attorneys for remaining Petitioner

16
17 Agreed to:

18
19 /s/ Ernest A. Tolin
20 United States Attorney